

# HOUSE BILL No. 1963

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-4.7-3-6; IC 24-4.9; IC 34-30-2-96.5.

**Synopsis:** Unsolicited electronic mail. Requires the attorney general to establish a list of electronic mail addresses of persons who request not to receive commercial or charitable solicitations by electronic mail. Provides that a person may not send a commercial or charitable solicitation by electronic mail to an electronic mail address on the list. Authorizes the attorney general to seek civil remedies for violations. Provides immunity to an interactive computer service from actions for blocking electronic mail that violates the statute. Changes the name of the telephone solicitation fund.

**Effective:** July 1, 2003.

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**Thompson**

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January 23, 2003, read first time and referred to Committee on Technology, Research and Development.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1963

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 24-4.7-3-6, AS ADDED BY P.L.189-2001,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2003]: Sec. 6. (a) The consumer protection division ~~telephone~~  
4 **consumer protection** solicitation fund is established for the purpose  
5 of the administration of this article and IC 24-4.9. **The fund** shall be  
6 used exclusively for this purpose.  
7 (b) The division shall administer the fund.  
8 (c) The division shall deposit all revenue received under this article  
9 **or under IC 24-4.9** in the fund.  
10 (d) Money in the fund is continuously appropriated to the division  
11 for the administration of this article.  
12 (e) Money in the fund at the end of a state fiscal year does not revert  
13 to the state general fund. However, if the amount of money in the fund  
14 at the end of a particular state fiscal year exceeds two hundred  
15 thousand dollars (\$200,000), the treasurer of state shall transfer the  
16 excess from the fund to the state general fund.  
17 SECTION 2. IC 24-4.9 IS ADDED TO THE INDIANA CODE AS



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A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

**ARTICLE 4.9. ELECTRONIC MAIL SOLICITATION OF CONSUMERS**

**Chapter 1. General Provisions**

**Sec. 1. This article does not apply to any of the following:**

(1) An electronic mail message sent in response to an express request of the person to whom the electronic mail message is sent.

(2) An electronic mail message sent primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time the message is sent.

(3) An electronic mail message sent on behalf of a charitable organization that is exempt from federal income taxation under Section 501 of the Internal Revenue Code, but only if all the following apply:

(A) The electronic mail message is sent by a volunteer or an employee of the charitable organization.

(B) The electronic mail message discloses all the following information upon making contact with the consumer:

(i) The true first and last name of the individual sending the electronic mail message.

(ii) The name, address, and electronic mail address of the charitable organization.

(4) An electronic mail message sent by an individual licensed under IC 25-34.1 if:

(A) the sale of goods or services is not completed; and

(B) payment or authorization of payment is not required; until after a face to face sales presentation by the seller.

(5) An electronic mail message sent by an individual licensed under IC 27-1-15.5 when the individual is soliciting an application for insurance or negotiating a policy of insurance on behalf of an insurer (as defined in IC 27-1-2-3).

(6) An electronic mail message sent soliciting the sale of a newspaper of general circulation, but only if the electronic mail message is sent by a volunteer or an employee of the newspaper.

**Chapter 2. Definitions**

**Sec. 1. The definitions in this chapter apply throughout this article.**

**Sec. 2. "Assist the transmission" means to provide substantial**



1 assistance or support that enables a person to formulate, compose,  
 2 send, originate, initiate, or transmit a commercial electronic mail  
 3 message when the person providing the assistance knows or  
 4 consciously avoids knowing that the initiator of the commercial  
 5 electronic mail message is engaged, or intends to engage, in a  
 6 practice that violates this article.

7 Sec. 3. (a) "Commercial electronic mail message" refers to an  
 8 electronic mail message sent for any of the following purposes:

9 (1) Promoting the sale or lease of real property, goods, or  
 10 services.

11 (2) Soliciting a donation to a charitable organization and the  
 12 electronic mail message does not satisfy IC 24-4.9-1-1(3).

13 (3) Obtaining information that will or may be used for the  
 14 direct solicitation of a sale of consumer goods or services or  
 15 an extension of credit for such purposes.

16 (b) The term does not include an electronic mail message to  
 17 which an interactive computer service provider has attached an  
 18 advertisement in exchange for free use of an electronic mail  
 19 account, if the sender has agreed to such an arrangement.

20 Sec. 4. "Consumer" means a person with an electronic mail  
 21 address who is an actual or a prospective:

22 (1) purchaser, lessee, or recipient of consumer goods or  
 23 services; or

24 (2) donor to a charitable organization.

25 Sec. 5. "Consumer goods or services" means any of the  
 26 following:

27 (1) Tangible or intangible personal property or real property  
 28 that is normally used for personal, family, or household  
 29 purposes.

30 (2) Property intended to be attached to or installed on real  
 31 property without regard to whether it is attached or installed.

32 (3) Services related to property described in subdivision (1) or  
 33 (2).

34 (4) Credit cards or the extension of credit.

35 Sec. 6. "Division" refers to the consumer protection division of  
 36 the office of the attorney general.

37 Sec. 7. "Doing business in Indiana" means sending a  
 38 commercial electronic mail message to consumers located in  
 39 Indiana, whether the electronic mail message is sent from a  
 40 location in Indiana or outside Indiana.

41 Sec. 8. "Electronic mail address" means a destination,  
 42 commonly expressed as a string of characters, to which electronic

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mail may be sent or delivered.

Sec. 9. "Electronic mail solicitor" means an individual, a firm, an organization, a partnership, an association, or a corporation, including affiliates and subsidiaries, doing business in Indiana.

Sec. 10. "Fund" refers to the consumer protection division consumer protection solicitation fund established by IC 24-4.7-3-6.

Sec. 11. (a) "Initiate the transmission" refers to the action by the original sender of an electronic mail message.

(b) The term does not include an action by any intervening interactive computer service that may handle or retransmit the message.

Sec. 12. (a) "Interactive computer service" means an information service, a system, or an access software provider that provides or enables computer access to a computer server by multiple users.

(b) The term includes the following:

(1) A service or system that provides access to the Internet.

(2) A system operated or services offered by a library, a school, a state educational institution (as defined in IC 20-12-0.5-1), or a private college or university.

Sec. 13. "Internet domain name" refers to a globally unique, hierarchical reference to an Internet host or service, assigned through centralized Internet naming authorities, comprising a series of character strings separated by periods, with the rightmost string specifying the top of the hierarchy.

Sec. 14. "Listing" refers to the no electronic mail solicitation listing published by the division under IC 24-4.9-3 that lists the names of persons who do not wish to receive commercial electronic mail messages.

### Chapter 3. Duties of the Division

Sec. 1. (a) The division shall establish, maintain, and publish a listing of electronic mail addresses of Indiana consumers who request not to be solicited by electronic mail as provided in this chapter.

(b) A consumer's electronic mail address shall be placed on the listing if the consumer requests to be added to the listing according to a procedure approved by the division.

(c) The listing shall be updated upon receipt of a request from a consumer.

(d) The division shall publish the listing on the computer gateway administered by the intelnet commission under IC 5-21-2.

Sec. 2. The division shall investigate complaints received

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concerning violations of this article.

**Sec. 3.** The division shall notify Indiana residents of the rights and duties created by this article.

**Sec. 4.** The division may adopt rules under IC 4-22-2 to implement this article.

#### **Chapter 4. Transmission of Commercial Electronic Mail**

**Sec. 1.** A person may not initiate the transmission of, conspire with another to initiate the transmission of, or assist the transmission of a commercial electronic mail message to an electronic mail address on the most current listing.

**Sec. 2. (a)** An interactive computer service may, upon its own initiative, block the receipt or transmission through its service of a commercial electronic mail message that it reasonably believes is, or will be, sent in violation of this chapter.

**(b)** An interactive computer service is not liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any commercial electronic mail message that it reasonably believes is, or will be, sent in violation of this chapter.

#### **Chapter 5. Civil Remedies**

**Sec. 1.** An electronic mail solicitor who violates IC 24-4.9-4 commits an act that is actionable by the attorney general under this chapter.

**Sec. 2.** In an action under this chapter, the attorney general may obtain any or all of the following:

- (1) An injunction to enjoin future violations of IC 24-4.9-4.
- (2) A civil penalty of not more than the following:
  - (A) Ten thousand dollars (\$10,000) for the first violation of IC 24-4.9-4.
  - (B) Twenty-five thousand dollars (\$25,000) for each violation after the first violation.

For purposes of this subdivision, each electronic mail message sent in violation of IC 24-4.9-4 is considered a separate violation.

- (3) The attorney general's reasonable costs in:
  - (A) the investigation; and
  - (B) maintaining the action.
- (4) Reasonable attorney's fees.
- (5) Costs of the action.

**Sec. 3.** An action brought under this chapter may not be brought more than two (2) years after the date the electronic mail message complained about was sent.

**Sec. 4.** An action under this chapter may be brought in the

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1 circuit or superior court of Marion County.

2 Sec. 5. The attorney general may employ counsel to represent  
3 the state in an action under this chapter.

4 SECTION 3. IC 34-30-2-96.5 IS ADDED TO THE INDIANA  
5 CODE AS A NEW SECTION TO READ AS FOLLOWS  
6 [EFFECTIVE JULY 1, 2003]: Sec. 96.5. IC 24-4.9-4-2 (Concerning  
7 the action of an interactive computer service in blocking the receipt  
8 or transmission of certain electronic mail messages).

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